INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Jurisdiction	1
Nature of case	4
Appendix "A"—Opinion of the Supreme Court of the State of New Mexico	12

Statutes Cited.

Act of Congress of March 3, 1869	2
New Mexico Statutes Annotated, Compilation 1929, page 400, Chapter 29, Sections 29-901, 29-902 and 29-903	4
United States Code, Title 28, Section 344a (Judicial Code, Section 237, as amended)	3

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1160

BOARD OF TRUSTEES OF THE TOWN OF CEBOLLETA LAND GRANT,

Appellant,

vs.

L BAR CATTLE COMPANY, INC., A CORPORATION.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW MEXICO.

STATEMENT OF JURISDICTION.

Pursuant to Rule 12, Paragraph I of the Rules of the Supreme Court of the United States, the appellant, Board of Trustees of the Town of Cebolleta Land Grant, et als., files this statement showing the basis upon which appellant contends that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question:

I.

Jurisdiction.

The statutory provision believed to sustain the jurisdiction (a) the final Judgment or Decree in suit No. 1727 in

the District Court of the County of Sandoval, State of New Mexico, filed in the office of the Clerk of the District Court of the said County of Sandoval, on the 2nd day of April, 1940. In which suit the plaintiff, L Bar Cattle Company, Inc., a corporation, filed a suit to establish its estate against adverse claims of the defendants therein, among said defendants of which defendants, the Board of Trustees of the Town of Cebolleta Land Grant, naming the individuals of said Board of Trustees, to-wit: Jose O. Jaramillo, Alberto Anzures, Demetrio Chavez, Vicente Vallegos, and Luz Apodaca.

Pursuant to an act of the Congress of the United States, enacted and approved by the then President of the United States on the 3rd day of March, 1869. Said act of Congress, and the approval thereof being to-wit:

> March 3, 1869. Chap. CLII—An Act to confirm certain private land Claims in the Territory of New Mexico.
>
> *Certain Private Land Claims in New Mexico Confirmed.*
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That private land claims numbered forty-one, forty-two, forty-four *forty-six,* and forty-seven, Territory of New Mexico, as known and designated by the numbers aforesaid in the reports of the surveyor-general of said Territory and on the books of the commissioner of the General Land office, be, and the same are hereby confirmed:
>
> *Certain rights not affected.*
>
> Provided, that such confirmation shall only be construed as a quit-claim on (or) relinquishment of all title or claim on the part of the United States to any of the lands not improved by or on behalf of the United States, and not including any military or other reservation embraced in either of the said claims, and shall not

affect the adverse rights of any person or persons to the same, or any part or parcel thereof.

Claims to be surveyed and platted, and patents to issue.

Section 2. And be it further enacted, That the commissioner of the general land office shall, without unreasonable delay, cause the lands embraced in said several claims to be surveyed and platted, at the proper expense of the claimants thereof, and upon the filing of said surveys and plats in his office he shall issue patents for said lands in said Territory which have heretofore been confirmed by Acts of Congress and surveyed, and plats of such survey filed in his office as aforesaid, but for which no patents have heretofore been issued.

Surveys to conform to public surveys.

Section 3. And be it further enacted, That all surveys authorized by this act shall conform to and be connected with public surveys of the United States in said Territories, so far as the same can be done consistently with landmarks and boundaries specified in the several grants upon which said claims are founded:

Proviso.

Provided, however, that when said lands are so confirmed, surveyed, and patented, they shall in each case be held and taken to be in full satisfaction of all further claims or demands against the United States.

Approved, March 3, 1869.

The private land claim recited herein, being private land claim No. 46, and which private land claim includes the Town of Cebolleta Land Grant, and the appellant in this suit.

The statutory provision believed to sustain the jurisdiction is Sec. 344 (a) of Title 28 of the United States Code (Judicial Code, Sec. 237, as amended).

Pursuant to provision, Chapter 29, entitled "Community Land Grants", and set forth in New Mexico Statutes Annotated, Compilation 1929, page 400, and is set forth in sections 29-901, 29-902, 29-903, page 414. In these sections the Cebolleta Land Grant is designated as "Sevilleta De La Joya Grant."

II.

Nature of Case.

It is shown by the evidence in this case that the Board of Trustees of the Town of Cebolleta Land Grant have fulfilled their duties as required by law, and have had four meetings each year, they have kept records of each meeting, and in every respect have complied with the Federal Statute set forth herein. In the answer of the Board of Trustees of the Town of Cebolleta Land Grant, there is set forth the United States Land Patent, said patent is made a part of the answer of the Board of Trustees of the Town of Cebolleta Land Grant, the grantees therein being thirty in number. Among the covenants of said grantees is the following recital:

> "*TO HAVE AND TO HOLD* the said tract of land with appurtenances unto the said *Inhabitants of the Town of Cevolleta* their successors and assigns forever, with the stipulations aforesaid."

In the reply of the plaintiff, L Bar Cattle Company, Inc., a corporation, to the answer of the defendants Board of Trustees of the Town of Cebolleta Land Grant, the United States Land Patent was admitted by the plaintiff. The land conveyed to the grantees is specifically described, and the object set forth therein as to the boundaries were of a permanent nature. The acreage conveyed contained 199,567.92 acres according to the survey thereof, and is designated on the plats of the official survey of said grant.

The lands described in the answer of the defendant, Board of Trustees of the Town of Cebolleta Land Grant, said lands being situated in the Counties of Valencia and Sandoval, New Mexico, and which lands are the same lands that are claimed to be owned by the L Bar Cattle Company, Inc., a corporation, and plaintiff in this suit, said lands are specifically described, to-wit:

All that certain 20,000 acre Westerly part of the tract of land commonly known as the Capitan Antonio Baca Grant or Nuestra Senora de la Luz de las Lagunitas Grant lying in Sandoval County, New Mexico, which said 20,000 acre tract is described as follows, to-wit:

Beginning at the Northeast Corner of the tract, a point on the north boundary of the Grant, 1.88 chains east of the 3 mile corner, and running

thence West 89.88 chains to the Northwest corner of the grant and the Northwest corner of the tract;
thence along the West boundary of the tract and the Grant South 18° 30′ East 10.00 chains;
thence South 41° 30′ East 16.90 chains;
thence South 8° 12′ East 11.98 chains;
thence South 2° 45′ East 50.32 chains;
thence South 33° 30′ West 65.25 chains;
thence South 57° 00′ West 49.91 chains;
thence South 45° 30′ West 7.86 chains;
thence South 53° 00′ West 9.39 chains;
thence South 89° 15′ West 94.42 chains;
thence South 50° 00′ West 114.48 chains;
thence South 42° 00′ West 93.80 chains;
thence South 1° 15′ East 43.59 chains;
thence South 4° 00′ East 15.44 chains;
thence South 1° 10′ West 29.06 chains;
thence South 12° 20′ East 71.54 chains;
thence South 15° 45′ East 26.08 chains;
thence South 0° 45′ East 70.51 chains;
thence South 28° 30′ West 13.92 chains;
thence South 36° 30′ West 19.91 chains;
thence South 24° 00′ West 21.50 chains;

thence South 29.50 chains to the Southwest corner of the Grant and Tract;
thence along the South boundary of Grant and Tract North 71° 30′ East 6.20 chains;
thence North 73° 15′ East 4.80 chains;
thence North 70° 00′ East 4.15 chains;
thence North 63° 30′ East 3.15 chains;
thence North 39° 30′ East 2.50 chains;
thence North 51° 30′ East 4.40 chains;
thence South 72° 15′ East 6.50 chains;
thence North 56° 30′ East 8.30 chains;
thence North 81° 39′ East 24.50 chains;
thence South 68° 00′ East 24.23 chains;
thence North 44° 45′ East 17.51 chains;
thence North 67° 15′ East 32.34 chains;
thence North 87° 45′ East 32.98 chains;
thence South 59° 30′ East 48.02 chains;
thence North 74° 45′ East 24.41 chains;
thence South 47° 40′ East 24.24 chains;
thence North 67° 15′ East 13.91 chains;
thence South 3° 50′ East 13.62 chains;
thence South 76° 40′ East 9.53 chains;
thence South 8° 25′ East 24.07 chains;
thence North 71° 45′ East 23.93 chains;
thence South 22° 50′ East 14.83 chains;
thence North 89° 30′ East 35.93 chains;
thence North 40° 15′ East 10.89 chains;
thence North 86° 45′ East 25.59 chains;
thence South 89° 30′ East 34.60 chains;
thence South 79° 45′ East 24.17 chains;
thence South 12° 15′ East 12.23 chains to the Southeast Corner of Tract;
thence North 711.07 chains to the point of beginning.

the within description contains 8012.05 acres of land which are in conflict with the Cebolleta Grant, and which are included as a part of a tract hereinafter described.

All that portion of Tract No. 8 of the Cebolleta Land Grant in Valencia County, New Mexico, set off to Juan Anaya et al. (being unrepresented owners) by Decree in

Cause #6113 on the docket of the District Court in and for Bernalillo County, New Mexico, on January 21, 1905, which said portion is described as follows:

Beginning at the Southeast Corner of the Grant—

thence along the east boundary thereof North 52° 45′ East 61 chains;
thence North 22° 30′ East 58 chains;
thence North 1° 30′ West 61 chains;
thence North 27° East 60 chains;
thence North 6° 45′ East 37.10 chains;
thence West 431.66 chains;
thence South 51.57 chains;
thence West 165.77 chains to a point on the Westerly boundary of Tract No. 8 of said Grant;
thence South 197.73 chains along said westerly boundary to a point on the southerly boundary of said Grant, which point is 6.30 chains east of 13 mile corner on the South boundary of said Grant;
thence East 492.70 chains along said Southerly boundary to a point of beginning, and containing 11,839 acres.

All that portion of Tract 1 of the Cebolleta Land Grant, in Valencia County, New Mexico, decreed in severalty to A. L. Richardson by decree in Cause 6113 on the docket of the District Court in and for Bernalillo County, New Mexico, on January 21st, 1905, which lies Easterly of Sections 17, 21, 28 and 33 in Township 12 North, Range 6 West, N. M. P. M., and Easterly of Sections 4 and 9 in Township 11 North of Range 6 West, N. M. P. M., and Easterly of a line drawn directly North from the six mile Corner on the south boundary line of said Cebolleta Grant, thru Sections 15 and 22 in said Township 11 North of Range 6 West, N. M. P. M., (All sections above referred to meaning said sections when the Government Survey is extended over, upon and across said area) containing twenty-five thousand six hundred thirty-eight (25,638) acres.

There Is Excepted from the above described tract all that portion of the West 762.5 feet of Section 15, Township 11 North of Range 6 West which might be included in the above description, and all of that portion of Section 22 and the West 947.76 feet of Section 23, Township 11 North, Range 6 West lying North of the South line of the Cebolleta Grant.

Also

All of Tract 6 of the Cebolleta Land Grant in Valencia County and Sandoval County, New Mexico, decreed in severalty to L. Bradford Prince, Roman L. Baca and Charles Seymour, in proportions mentioned therein, by Decree in Cause 6113 on the Docket of the District Court in and for Bernalillo County, New Mexico, on January 21st, 1905, which said tract is described as follows:

Beginning at a point 2 chains and 26 links South of the Eight mile corner on the East boundary line of the Cebolleta Grant and running

thence West 213 chains 23 links to an angle point;
thence North 148 chains 70 links to an angle point;
thence West 245 chains 70 links to an angle point;
thence South 509 chains 73 links to an angle point;
thence East 458 chains 93 links to the East boundary line of said Grant, at a point South 6° 45′ West 42 chains and 80 links from the four mile corner on the said East line of said Grant;
thence North 6 degrees 45 minutes East 42 chains and 80 links to said 4 mile corner;
thence North 317 chains 74 links to the place of beginning, containing 20,201 acres.

All that portion of Tract 8 of the Cebolleta Land Grant in Valencia County, New Mexico, set off to Juan Anaya et al. (being unrepresented owners) by decree in Cause 6113 on the docket of the District Court in and for Bernalillo County, New Mexico, on January 21, 1905, which was sub-

sequently, by Decree in Cause 1620 on the docket of the District Court in and for Valencia County, New Mexico, entered February 10, 1909, set apart and segregated to Willi Spiegelberg, and which said portion is described as follows:

Beginning at the Northwest Corner of said tract 8 and running

thence East 9141 feet to the Northeast Corner,
thence South 8230 feet to a corner,
thence East 1800 feet to a corner,
thence South 3404 feet to the Southeast Corner,
thence West 10,941 feet to the Southwest Corner, a point on the Western boundary of said tract 8,
thence North along said Western boundary 11,634 feet to the place of beginning, containing 2582 acres.

All that certain tract of land in Valencia and Sandoval Counties, New Mexico, which is part of the Cebolleta Land Grant, to-wit:

Beginning at a point on the East boundary of said Grant, 11 chains and 94 links North of the 10 Mile corner on the East line of said Grant;

thence West 213 chains 23 links to an angle point;
thence South 174 chains and 20 links to an angle point;
thence East 213 chains and 23 links to a point on the east Boundary of said Grant which is 2 chains and 26 links south of the 8 mile corner;
thence North 174 chains and 20 links to the place of beginning;

Being Tract No. 4 as described and set forth in the report of the Commissioners and in the Decree of the District Court of Bernalillo County, N. M., in that certain Cause #6113 on the docket of said Court wherein Roman L. Baca et al. were plaintiffs and Santiago Anaya et al. were defendants, containing 3,714 acres.

A tract of land in Sandoval County, New Mexico, which is part of the Cebolleta Land Grant and which is described as follows, to-wit:

Beginning at the Northeast Corner of said Grant, and running

thence North 84° 45′ West 256.26 chains to a point on the North line of said Grant which is North 84° 45′ West 16.26 chains from the 3 mile corner on the North line of said Grant;
thence South 487 chains;
thence East 42 chains;
thence South 134.50 chains;
thence East 213.23 chains to a point on the East line of said Grant which is north 11.94 chains from the 10 mile corner on the east line of said Grant;
thence North 598.08 chains to the place of beginning,

being Tract No. 3 as described and set forth in the report of Commissioners and in the Decree of the District Court of Bernalillo County, New Mexico, in that certain Cause No. 6113 on the docket of said Court wherein Roman L. Baca et al. were plaintiffs and Santiago Anaya et al. were defendants, and containing 15,000 acres.

This Tract contains an area of 8012.05 acres which is in conflict with the Capitan Antonio Baca Grant or Nuestra Senora de la Luz de las Lagunitas Grant, as hereinbefore noted.

Also a Tract of land in Sandoval County, New Mexico, within the exterior boundaries of the Cebolleta Land Grant, which is described as follows:

The Northerly 6723 acres of all that part of tract 5 of said Grant which lies in Sandoval County, New Mexico; the said tract 5 being described and set forth in the report of the Commissioners and in the decree of the District Court of Bernalillo County, N. M., in that certain Cause No. 6113 on the docket of said Court wherein Roman L. Baca et al. were plaintiffs and Santiago Anaya et al. were defendants,

said 6723 acres being more particularly described as follows:

Beginning at the Northeast corner, which is the Northeast corner of said Tract No. 5 a point on the North boundary of the Cebolleta Grant sixteen chains and twenty-six links North eighty-four degrees, forty-five minutes West from the Three Mile corner on said Grant boundary, running

thence North eighty-four degrees forty-five minutes West along said Grant boundary one hundred ninety-eight chains and eighty-four links to the Northwest corner at the point of intersection of said Grant boundary with the West line of Sandoval County;

thence South along the West line of Sandoval County three hundred eighty-seven chains and nine links to the Southwest corner;

thence East one hundred ninety-eight chains to the Southeast corner;

thence North three hundred sixty-eight chains and ninety-seven links to the place of beginning, and containing 6723 acres, more or less.

(Sgd.) GEORGE S. KLOCK,
Attorney for the Board of Trustees
of the Town of Cebolleta Land Grant.

APPENDIX "A".

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO.

JANUARY TERM, 1941.

No. 4639.

L BAR CATTLE COMPANY, INC., a Corporation,
Plaintiff and Appellee,

vs.

BOARD OF TRUSTEES OF THE TOWN OF CEBOLLETA LAND GRANT, et al., *Defendants and Appellants.*

Appeal from the District Court of Sandoval County, Johnson, Judge.

Supreme Court of New Mexico. Filed Nov. 18, 1941. Herbert Gerhart, Clerk.

Botts & Botts, Albuquerque, New Mexico, Attorneys for Appellee.

George S. Klock, Esq., Albuquerque, New Mexico, Attorney for Appellants.

11-28-41, Motion for rehearing.
1-3-42, Motion denied.

OPINION.

BICKLEY, *J.:*

Plaintiff commenced suit in statutory form for quieting the title to about eighty-five thousand (85,000) acres of land, the greater portion of which lies within the exterior boundaries of what is commonly known as the Cebolleta Land Grant.

All defendants, except the appellant, defaulted. It is assumed that defendant's answer constitutes a general denial.

On the trial, Appellee in support of its title, introduced seven abstracts of title which appellee claims traced its record title to the land involved from the time of the Gov-

ernment Patent down to the appellee. Appellee also relied on title by adverse possession and the court in a paper entitled "The Court's Opinion, Findings of Fact and Conclusions of Law" made a specific finding and conclusion that all the elements were in evidence to support appellee's title by adverse possession. We have read the record and conclude that this finding is supported by substantial evidence. Indeed, this finding seems not to be challenged by appellants except insofar as they argue that the title to the lands involved may not be lost by the grantees named in the patent from the United States, viz., the inhabitants of the Town of Cebolleta, their successors and assigns, and that a title by adverse possession may not be acquired to such lands.

About a month later, the court entered its judgment and decree in which it found generally that the plaintiff is the owner in fee simple and in possession of the land involved in this suit, and quieted plaintiff's title thereto.

In perfecting its appeal, appellant filed a praecipe, calling for the complete record and proceedings, including the abstracts of title introduced by appellee as its Exhibits A to G, inclusive.

When it came time for settling the bill of exceptions appellant presented to the court for settlement the stenographer's transcript of testimony without the inclusion of any exhibits or any statements of their existence or substance with so much of their contents as would be necessary to a proper presentation of the point at issue. Thereupon appellee objected to the settling or signing of the court stenographer's transcript thus presented, on the ground, among others, that such transcript did not comply with or conform to Sections 2 and 3 of Rule XIII and Sections 7 and 8 of Rule XIV of the Supreme Court. Thereupon the court made its certificate settling the bill of exceptions and, after setting out appellee's objections, concluded the certificate of settlement thus:

> "And thereupon the Court ruled, and called to the attention of the Appellant, that the transcript tendered is defective and incomplete in the particulars pointed out in Appellee's objections; whereupon Appellant advises and assures the Court that plaintiff's Exhibits

A to G, both inclusive, being the abstracts of title to the land, title to which is quieted in the Appellee by the Court's decree herein, are not material or relevant to the decision of any question which Appellant will raise or argue in the Supreme Court on appeal, and for that reason elects to have said Exhibits omitted from the record on appeal; and now, based on the advice, assurance and election of the Appellant aforesaid, and over the objection of Appellee, on this 13th day of May, 1941, to which time the consideration of appellant's application has been duly continued, the Judge of this Court has signed and settled the foregoing as Appellant's bill of exceptions."

Thus it appears that the evidence—the abstracts of title—introduced as proof of plaintiff's title is not before us.

We have said many times that, upon a doubtful or deficient record, every presumption is indulged in favor of the correctness of the judgment of the trial court and the burden is on the appellant to overcome these presumptions. See Ball et al. *v.* U. S. Copper Co., et al., 35 N. M. 637, 6 P. (2d) 192; Mansfield *v.* Reserve Oil Co., 38 N. M. 187, 29 P. (2d) 491; Hobbs *v.* Town of Hot Springs, 44 N. M. —, 106 P. (2d) 856.

Even if we should regard the general finding and conclusion of the trial court contained in the decree that the plaintiff is the owner in fee simple and in possession of the lands involved, to be restricted by the finding made a month earlier that the plaintiff had proved its title by adverse possession, we should presume that the abstracts introduced in evidence and absent from the record would show the element of color of title in the plaintiff. Appellants have assigned many errors, principally on account of the trial court's refusal to make certain findings of fact and conclusions of law requested by them. Some of these may have been refused because not warranted by the evidence, others because immaterial, others because argumentative merely.

In view of the state of the record and the points presented by appellants upon which they base their argument for reversal of the judgment, we are unable to say that the court committed prejudicial error in such refusals.

As we understand appellant's contention, it is that lands described in a grant from the United States to named grantees being "the Inhabitants of the Town of Cevolleta, their successors and assigns", evidenced by a Patent which contains the recital:

> "*TO HAVE AND TO HOLD* the said tract of land with appurtenances unto the said *Inhabitants of the Town of Cevolleta* their successors and assigns forever, with the stipulations aforesaid."

can never be divested by either voluntary or involuntary means, and that lands so granted are not subject to prescription.

We are not unaware that the United States has in some instances placed qualified restrictions on the alienation of lands patented to certain Indians, and perhaps others, to protect them from an improvident disposition of the lands.

But we see nothing in the language of the patent here involved to indicate any intention that there should be any restraint upon alienation.

In H. N. D. Land Co. *v.* Suazo, 44 N. M. 547, 105 P. (2d) 744, we held:

> "Title to common and unalloted lands of a community grant could be acquired by adverse possession."

See also Christmas *v.* Cowden, 44 N. M. 517, 105 P. (2d) 484.

Finding no error the judgment and decree should be affirmed, and

It Is So Ordered.

(Sgd.) HOWARD L. BICKLEY,
Justice.

We Concur:

(Sgd.) CHARLES R. BRICE,
Chief Justice.

(Sgd.) A. L. ZINN,
Justice.

(Sgd.) DANIEL K. SADLER,
Justice.

MABRY, *J.*, did not participate.

(9957)

No. 1160. BOARD OF TRUSTEES OF THE TOWN OF CEBOLLETA LAND GRANT *v.* L BAR CATTLE CO., INC. Appeal from the Supreme Court of New Mexico. May 4, 1942. *Per Curiam:* The appeal is dismissed for the want of jurisdiction. Section 237 (a), Judicial Code, as amended, 28 U. S. C., § 344 (a). Treating the papers whereon the appeal was allowed as an application for writ of certiorari as required by § 237 (c) of the Judicial Code, as amended, 28 U. S. C., § 344 (c), certiorari is denied. *Mr. George S. Klock* for appellant. Reported below: 46 N. M. 26, 120 P. 2d 432.